IN THE

Supreme Court of the United States

October Term, 1963

No. 387

VICTOR RABINOWITZ and LEONARD B. BOUDIN,
Petitioners,

v.

ROBERT F. KENNEDY, Attorney General of
the United States

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONERS

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STATUTES, RULES AND LEGISLATIVE MATERIALS

TREATISES

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I. The Complaint States a Cause of Action Under Normal Equity Standards

The government's brief (pp. 25-27) belabors the obvious and undisputed point that the exercise of declaratory judgment jurisdiction rests on the same discretionary considerations normally considered in equity actions. That discretion, however "is to be liberally exercised in order to achieve the purposes" of the Declaratory Judgment Act. 6 Moore Federal

Practice (2d ed.), 3030; *Aetna Casualty Insurance Co.* v. *Quarles*, 92 F. 2d 321.[1] And it must be an informed discretion based on rational considerations (see Moore, op. cit., 3025-3047 for a discussion of these considerations). Some of these were listed in the *Aetna* case, *supra*, at 325-6. The courts should refuse a declaratory judgment where another court (especially a state court) has jurisdiction of the issue; where a proceeding involving the issue is pending in another tribunal; where a special statutory remedy is provided; or where another remedy "will be more effective or appropriate under the circumstances." See *Nye* v. *United States*, 137 F. 2d 71.

The present case, however, meets the equity standard.[2] The plain fact is that unless the petitioners are able to obtain relief in this proceeding, they have no adequate judicial relief. The statute, in the circumstances of its application, is just as much an *in terrorem* statute as that involved in *Ex parte Young*, 209 U.S. 123. Quite understandably, petitioners, who

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[1] See *Public Service Commission of Utah* v. *Wycoff Co.*, 344 U.S. 237, 243:

"... when all the axioms have been exhausted and all words of definition have been spent, the propriety of declaratory relief in a particular case will depend on a circumspect sense of its fitness informed by the teachings and experience concerning the functions and extent of federal judicial power ... the courts should not be reluctant or niggardly in granting this relief in the cases for which it was designed."

[2] The majority below never considered this question. The dissenting opinion of Judge Fahy (R. 29-34) did consider it and demonstrated quite clearly that the present suit falls within normal equity doctrine. And although the trial court wrote no opinion, its denial of the government's motion for judgment on the pleadings necessarily involved a determination that petitioners' complaint stated a cause of action in equity.

would be the object of a criminal prosecution under the statute are not as sanguine as the respondent as to the consequences that might flow from an indictment and prosecution. And in a different context Mr. Katzenbach, Deputy Attorney General, and presumably an authorized spokesman for the Justice Department, expressed his agreement with the petitioners as to the dire consequences to attorneys which might result from a criminal prosecution under the statute. See Hearings before the Senate Committee on Foreign Relations on S. 2136, 88th Cong., 1st Sess., (hereinafter referred to as Hearings) at p. 26.[3]

The government argues (Br. 32) that petitioners will suffer no irreparable harm from a prosecution because the case is "essentially a test case" and "any indictment and prosecution would not reflect on petitioners' honesty and integrity since it would involve only the legal question whether their conceded activities as counsel for a foreign government bring them within the Act's registration requirements." But a successful prosecution of the petitioners will not culminate in a mere order to register. If the government succeeds, the end result will be a finding that petition-

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[3] Mr. Katzenbach told the Senate Committee on Foreign Relations considering amendments to the Foreign Agents Registration Act the following:

> "Of course, Senator, the penalty of being convicted of a felony, even if the fine was small or if no jail sentence was imposed can, in many instances, be a very heavy penalty indeed, just simply to have a conviction. This is not true in the corporate situation but in the individual situation to have been convicted of a felony, for example, in the case of a lawyer, amounts to automatic disbarment in most instances. I do not know whether a year in jail added to that adds very much when he has that kind of a penalty . . ."

ers are guilty of a felony and subject to a five year jail sentence, a $10,000 fine and whatever other consequences might flow from a felony conviction.

A criminal prosecution is not a proper forum for a "test" case. The stakes are too high where the possible consequences for being wrong on one's understanding of the law is a five year prison sentence followed by disciplinary proceedings. The government's reassurance in its brief as to petitioners' "honesty and integrity" is only slim comfort in the face of these hazards. It does not constitute a stipulation that petitioners should not be punished nor would such a stipulation be binding on a court in any event. In short, absent the opportunity to test the obligation to register in a proceeding such as the present, the threat of prosecution alone would be sufficient to compel petitioners to forego their important right of privacy and to register even if they are exempt. In essence, the respondent's complaint is that permitting the bringing of a declaratory judgment action, such as the present, will deprive him of the coercive power to compel registration by individuals who are expressly exempted from registration by Congress.[4]

As we have shown in our main brief (pp. 28-32) this is precisely the type of situation for which declaratory

[4] In arguing that the invasion of privacy resulting from registration is not a serious deprivation of rights, the government cites (Br. 37) the fact that 1675 individuals and firms, including 94 law firms and individual attorneys have registered under the Act. We may assume that these firms and individuals were either covered by the Act, or else, like petitioners, were exempt, but nevertheless surrendered their right to privacy because of the fear of prosecution. On the other hand, some law firms have refused to represent foreign principals because they "just do not like the idea of being called foreign agents," when they were doing nothing more than practicing law. See Hearings at p. 100.

judgment relief was designed, because a criminal prosecution is simply not adequate for the testing of the meaning and application of a statute such as the Foreign Agents Registration Act.[5] It was the recognition of this factor that led Mr. Katzenbach to request that Congress give the Department the power to enforce the statute by injunctive proceeding, arguing that the Department should have the same right to test the application of the statute in a civil proceeding as those requested to register had to test their obligation through a declaratory judgment proceeding.[6] Mr. Katzenbach's testimony demonstrates that, apart from the current litigation, the Department of Justice believes it to be fair, equitable and highly desirable to permit potential defendants under the Foreign Agents Registration Act to bring a declara-

[5] If, as suggested by the government (Br. 46) and by Mr. Katzenbach in his testimony before the Senate Foreign Relations Committee (Hearings, pp. 23-24), a failure to register based on a good faith belief in exemption is not a violation of the statute, then a criminal prosecution would fail to resolve this "test" issue. Since the government concedes petitioners' good faith, they would be entitled to a judgment of acquittal whether or not they were obligated to register, and the court might never reach or resolve the latter question.

[6] The proposed Act S. 2136 would give the Department the power to seek injunctive relief (See Hearings at p. 4). In response to a question from Senator Sparkman as to whether the Department had injunctive power under the Act in its present form, Mr. Katzenbach replied (Hearings, pp. 24-25):

> "I think not, Senator. There have been a couple of instances of a declaratory judgment, but this is where the action is brought not by the Government, but by a potential defendant, and he has the capacity to go into court and say that the Government is threatening him with a criminal prosecution if he does what he is entitled to do, and he can get a declaratory judgment on it. We do not have the same sort of power. . . ."

tory judgment action to test their obligation to register.[1]

There is no merit to the government's contention (Br. 17-24) that Congress intended that a criminal prosecution be the exclusive method for testing the meaning and applicability of the statute. The government fails to point to any statutory language which so provides. Nor is it to be presumed, in the absence of an express Congressional statement, that Congress meant to deprive potential defendants under the Foreign Agents Registration Act of whatever judicial remedies might otherwise be available to them either under the Declaratory Judgment Act or normal equity principles. The government's strained effort to uncover such intent from the Congressional purpose of forcing disclosure of the source of foreign propaganda material, so that the public would know its origins (see Govt. Br. 17-24 and the excerpts from the legislative history quoted therein) is especially wide of the mark. The complaint alleges (R. 3-4) and the government does not dispute (R. 26) that petitioners do not engage in propaganda, public relations, or lobbying of any kind. Nor is there any secret about their representation of the Republic of Cuba as attorneys. Since the public has been receiving no propaganda from the petitioners, respondent's argument about the need to inform the public as to the source of the propaganda it receives is pointless as applied to the present case. Respondent's emphasis on the purposes of the statute

[1] Both the language of S. 2136 (Sec. 7(2)) and Mr. Katzenbach's testimony flatly contradict the government's assertion (Br. 24) that "there has been no move in the direction of granting civil jurisdiction of disputes over the meaning of the statute or its administration."

as forcing the disclosure of foreign propaganda agents serves only to demonstrate the validity of petitioners' contention that the statute does not cover their activities.

Respondent apparently is not without misgivings about the harshness and injustice arising from the requirement of registration under penalty of criminal prosecution in cases where there is an honest dispute as to the coverage of the Act. It offers the following as a palliative for this harsh result: "Petitioners may still seek a hearing before the respondent in accordance with Rule 2 of the Regulations[8] and present the facts upon which they rely in claiming to be exempt from registration. If they should ultimately decide to register, they may seek waivers of questions which they consider inappropriate or unduly burdensome" (Br. 53-4). But this offers no solution for petitioners' dilemma. Their contention that they are not covered by the statute has already been rejected by respondent. Their problem is how to obtain a judicial review of this determination without the hazards of a criminal prosecution.

The same difficulty inheres in respondent's suggestion that petitioners "may seek waivers of questions which they consider inappropriate or unduly burdensome." What if the respondent, in his administrative capacity does not take the same position as suggested

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[8] In a footnote respondent states "Petitioners never sought to avail themselves of this procedure." According to the pleadings, however (R. 4, 20), petitioners discussed the issue of their obligation to register with the respondent, and he rejected their protestations that they were not covered by the Act.

in his brief (Br. 32-37),[9] and requires petitioners, under the threat of a criminal prosecution, to complete the registration forms which involve a gross invasion of privacy on matters completely irrelevant to petitioners' representation of their foreign principal? Will petitioners then be able to come into court for judicial review? If so, then there is no reason why petitioners cannot raise the issue of their exemption from the Act in this proceeding.[10] On the other hand, dismissal of this suit will impose an "unwarranted injustice" (Govt. Br. 53) if the administrative remedy which the Department now offers the petitioners is not subject to judicial review.

Nor is there any question here of the Court's interference with the Attorney General's "discretion" or "judgment" (see Govt. Br. 40). As the respondent's brief acknowledges (p. 42, fn. 16), the sole issue presented by the proceedings is the legal issue as to whether or not section 3(d) of the Act exempts "a representative of a foreign government which controls

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[9] The respondent apparently acknowledges that the bulk of the information sought by his registration forms has no relation to the activities of the petitioners, and apparently would be satisfied with a registration statement in which petitioners give little more than their firm name and address and the fact that they represent the Republic of Cuba in legal matters. If that is all that is required, petitioners have already made this information public both by filing their complaint in this action and their numerous court appearances on behalf of the Republic of Cuba, see e.g., *Banco Nacional de Cuba* v. *Sabbatino, et al.*, No. 16, this Term. Under this view the whole issue of petitioners' registration is meaningless and absurd.

[10] We do not understand respondent to contend that petitioners have failed to exhaust their administrative remedy. The complaint alleges (R. 5) and the answer admits (R. 21) that there is no administrative remedy.

the means of production and commerce within its borders and directly engages in trade and commerce.'"[11] And there is no basis for the argument that Congress entrusted the interpretation of the Foreign Agents Registration Act to the "judgment" and "discretion" of the Attorney General. The construction and interpretation of Congressional statutes is the responsibility of the courts and not of the Attorney General.[12] The sole question here is whether the courts may exercise that responsibility in the present proceeding, or must wait until the question is brought before it in a criminal proceeding. In either case, there is no issue of the Court's interfering with the Attorney General's

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[11] Respondent suggests in the same footnote that there may also be a question as to whether petitioners are engaged in "political" activities as defined in respondent's regulations. It states:

> "None of petitioners' allegations suggest that they are not retained, for example, to afford legal advice with respect to the enactment of legislation of interest to their clients or to engage in other activities which are deemed 'political' by the statute and regulations."

But the complaint alleges (R. 3-4) that petitioners were "retained by the Government of the Republic of Cuba to represent in the United States the Republic of Cuba and governmental agencies in legal matters, including litigation, involving the mercantile and financial interests of the Republic of Cuba. . . . The retainer does not cover advice or representation involving public relations, propaganda, lobbying, or political or other non-legal matters, nor have the plaintiffs advised, represented, or acted on behalf of the Republic of Cuba in any such matters." The answer stated (R. 20) that respondent had no information to the contrary.

[12] *Panama Canal Co. v. Grace Lines, Inc.*, 356 U.S. 309, relied on by the government for its contention (Br. 44) is entirely inapposite. The Court held there that Congress did entrust to the "judgment" and the "discretion" of the Panama Canal Co. the prescribing of tolls for the Panama Canal. It is no precedent for the argument that Congress entrusted to the Attorney General's "discretion" the interpretation of a criminal statute.

"discretion" or "judgment" because it disagrees with his interpretation of the statute.

Further, it should be noted that although both sides agree that the merits of the petitioners' obligation to register is not before the Court (See our main brief p. 25, fn. 18, Govt. Br. p. 42, fn. 16) the present posture of the case poses the question as to whether petitioners may bring a declaratory judgment action on the assumption that they are exempt. By denying the government's motion for judgment on the pleadings (R. 22), the trial court necessarily held that the complaint stated a cause of action, and that on the face of the complaint petitioners were exempt from the requirements of registration under the Act.[13] In that context, the government designedly chose to take an interlocutory appeal posing only the question as to whether or not, assuming petitioners are exempt, they "may have their rights adujdicated by a declaratory judgment action," and the trial court, in accordance with the provisions of 28 U.S.C. 1292(b) granted that appeal (R. 22-23).

II. Petitioners' Failure to Raise Constitutional Questions

Both the government (Br. 45, 51) and the majority below (R. 28) argue that the suit is barred because of the failure of petitioners to raise constitutional questions in their pleadings. For all of the reasons set out

[13] The government made the same argument before the trial court that it presents here, i.e., that because petitioners represent the Republic of Cuba, the exemption provision in Section 3(d) of the Act does not apply. In addition, we submit that our brief discussion of the merits in our main brief (fn. 18, pp. 25-26) is fully corroborated by the government's more elaborate demonstration (Br. 17-24) that the Act was designed to cover foreign agents in the area of propaganda.

both in our main brief and this reply brief we believe that the complaint is sufficient even in the absence of any allegations of unconstitutionality. However, it would not serve the interests of either party for this case to be decided on a pleading point, thus requiring petitioners to raise these questions either in a new complaint or an amended complaint, if in fact constitutional issues are fairly raised by the facts and the controversy (see our discussion of this question in our main brief pp. 13-14).

Since two separate constitutional questions are mentioned by the government, we will discuss each separately.

A. The Constitutional Question Arising From the Foreign Agents Registration Act.

At the time of the filing of their complaint, it was petitioners' position that the Act expressly exempted them from its scope, and for that reason respondent's demand that they register was unlawful and exceeded the authority granted to him under the Act. Accordingly, petitioners saw no reason or basis to challenge the constitutionality of an Act that did not apply to them.[14] However, in the course of this litigation, we have learned that, according to the Attorney General, the statute is not at all clear and definite but is, on the

[14] Petitioners did not and do not care to argue that Congress lacks the constitutional power to require registration by attorneys who represent foreign principals in purely financial and mercantile matters. Our contention was and is that Congress expressly did not require such registration. Of course if such registration were required, the information sought by the attorney General would have to be limited to matters relevant to the representation. Admittedly, see supra p. 8, fn. 9, the respondent's registration forms are not so limited.

contrary, vague and ambiguous and to be enforced as he interprets it. If this is so, then, as a criminal statute it is unconstitutional because it does not furnish an ascertainable standard of guilt, *Connally* v. *General Construction Co.*, 269 U.S. 385; *Lanzetta* v. *New Jersey*, 306 U.S. 451. This defect in the statute has been infused into it by the Attorney General's attempt to apply the statute far beyond the purpose for which it was enacted. The vagueness in the statute as administered by the Attorney General is graphically illustrated by the testimony of Mr. Arthur H. Dean, senior partner of Sullivan & Cromwell before the Senate Committee. According to Mr. Dean, the Department has told some lawyers who represented foreign principals that they are not required to register if they confine themselves to "just giving legal advice" and "were not trying to lobby or promote anything. . . ." (Hearings pp. 49, 51). And according to Mr. Dean, the Department itself admittedly does not know what the law means.[15]

We think petitioners' pleadings fairly read would permit petitioners to argue that if they are not exempted by the plain language of the statute, then the statute is too vague to be enforced in a criminal prosecution at least insofar as it is applied to other than

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[15] Mr. Dean testified as follows (Hearings, 52):

"In a number of my talks that I have had with the Department of Justice over the years, the thing they have always been concerned about in the previous law was it was so broad and so vague that they did not know how to interpret it . . ."

And Chairman Fulbright commented (Hearings, 56): "I think you have raised a very difficult problem, and one of the problems of enforcement in existing law has been the difficulty of interpreting some of these provisions."

See also Hearings, 75.

foreign propaganda agents. We ask the Court to construe the pleadings in that fashion, or alternatively to consider the complaint as if it had been amended to include such an allegation. It would serve no purpose to defer the matter, since if this Court does sustain the dismissal of the complaint because of the failure to make this allegation, petitioners will in any event move to amend the complaint when the case is returned to the trial court.[16]

B. The Unconstitutional Denial of Judicial Review.

The government and the court below also chide counsel for failing to raise the constitutional issue presented by petitioners' allegation that the penalties in a criminal prosecution are too severe for that to serve as an adequate method of judicial review. According to the government, petitioners should have further alleged that the denial of an adequate judicial remedy was unconstitutional. Petitioners made no such allegation because, in their view, they were afforded an adequate judicial remedy by the Declaratory Judgment Act. In essence the government's argument is that the Court should deny relief because petitioners do not argue that if the Court denies relief, such action would be unconstitutional. We submit that there is no need for the Court to engage in such tortuous reasoning in order to determine whether petitioners state a cause of action in equity and under the Declaratory Judgment Act.

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[16] Since the trial court found no defect in the complaint, petitioners had neither the occasion nor the opportunity to apply for leave to amend under Rule 15(a) of the Federal Rules of Civil Procedure which provides that "leave shall be freely given when justice so requires." Moreover, a trial court's denial of leave to amend would constitute reversible error, *United States* v. *Hougham*, 364 U.S. 310.

III. The Sovereign Immunity Doctrine Is Not a Bar to the Present Suit

We submit that in the final analysis the issue of sovereign immunity must be resolved on the basis of the same considerations which we have recited as justifying the bringing of a declarstory judgment action. As the government's brief acknowledges (pp. 53-54) the issue must be resolved on the basis of practical and policy considerations. As shown by the authorities cited in our main brief (pp. 20-23), there is no mechanical rule of sovereign immunity. And in the absence of some overriding policy considerations, the principle of *Stark* v. *Wickard*, 321 U.S. 288, 290 that "executive officers may be restrained from threatened wrongs in the ordinary courts in the absence of some exclusive alternative remedy" applies.

In our main brief (pp. 17-21), we demonstrated that for the most part, the Court has found such overriding policy considerations as require invocation of the sovereign immunity doctrine only in situations involving suits for specific performance, for government funds or for specific property in the possession of the government, and not in situations similar to that presented here. The government, ignoring our authorities, replies (Br. 53) that the doctrine has "frequently" been invoked even though property was not involved.[17] But

[17] Significantly, the government makes only the feeblest of efforts (Br. 50, fn. 21) to distinguish the numerous cases cited in our brief (pp. 18-20) in which this Court has assumed jurisdiction of suits challenging the actions of government officials and in which it "interfered with the public administration" and which cannot possibly be fitted into the formula of the *Larson* case. For a discussion of some of these cases, especially the significance of *Vitarelli* v. *Seaton*, 359 U.S. 535, see 3 Davis, *Administrative Law*, ch. 27, 1963 Pocket Part, pp. 114-116.

to support this assertion of "frequent" holdings, the government cites only one case in this Court, *Louisiana* v. *McAdoo*, 234 U.S. 627. Although the Court used sovereign immunity language in its decision, the holding in the case was that Congress had vested the Secretary of the Treasury with the unreviewable discretion to set tariff rates. The principle in the *McAdoo* case is essentially no different from that involved in the *Panama Canal* case discussed *supra*, p. 9, fn. 12, i.e. that the Court will not intervene where Congress has vested an administrative agency with unreviewable discretion. The fact that the Court reached the same result in the *Panama Canal* case where Congress has expressly provided that the Panama Canal Co. could sue and be sued amply demonstrates that the principle applied in the two cases does not rest upon the sovereign immunity doctrine.[18]

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[18] The other cases cited by the government to demonstrate the "frequent" application of the sovereign immunity doctrine to non-property cases are all court of appeals decisions, and are equally inapposite to prove the government's point. The discussion of sovereign immunity in *Rogers* v. *Skinner*, 201 F. 2d 521, 524 was entirely unnecessary to the decision in the case since the court held that the complaint should be dismissed because the Secretary of Labor was an indispensable party and that the complaint lacked merit in any event. In both *Ainsworth* v. *Barn Ballroom Co.*, 157 F. 2d 97, and *Harper* v. *Jones*, 195 F. 2d 705, the courts held that the judiciary had no competence to review the discretion of the commanding officer of a military base in setting certain establishments "off limits" for military personnel. Obviously the sovereign immunity doctrine has no significance when applied in a case where the complaint would be dismissed in any event. It is meaningful only when applied as in *Larson*, where absent the sovereign immunity barrier, the plaintiff would be entitled to recover. So here the government's burden on the sovereign immunity question is to show that petitioners are barred even if their complaint otherwise states a cause of action in equity.

To bring the present case within the principle of the *McAdoo* case, the government would have to show that the interpretation of the Foreign Agents Registration Act rests in the unreviewable discretion of the Attorney General. But the government does not even contend that. It acknowledges, as it must, that the courts can and should review his interpretation. It argues only that such review can be had only in a criminal prosecution. Thus the basic issue in this case is simply the question of the choice of remedy.

The government also argues a lack of precedent. It states (Br. 52):

> "Thus, we have found no case in which the Court has upheld jurisdiction . . . where the action complained of was merely the bringing of a criminal proceeding in which the defendant could fully litigate all his claims and defenses."

But this begs the question. We freely concede that if we have not made out a case that petitioners are entitled to declaratory judgment relief because a criminal proceeding does not furnish an adequate remedy, then our complaint is insufficient for lack of equity. If so, there is no need to invoke the doctrine of sovereign immunity. On the other hand, if we have made out a case in equity there is no authority for the proposition that sovereign immunity bars a suit such as the present in the absence of another adequate judicial remedy.

We submit that the absence of a contrary precedent is under the circumstances far more significant than our alleged failure to cite a case precisely in point. For it demonstrates that the government is asking the Court to extend the sovereign immunity doctrine to a

new and heretofore unexplored area. Since the doctrine is in current disfavor (see our main brief, pp. 21-22), it should not be so extended except for overriding policy considerations. And the government recites none.

Finally, we submit that the cases of *Philadelphia Co.* v. *Stimson*, 223 U.S. 605, and *Shields* v. *Utah Idaho Cent. R. Co.*, 305 U.S. 177 (discussed in our main brief at pp. 15-16) are controlling precedents for the exercise of jurisdiction here. The government attempts to distinguish these cases (Br. 46-47) on the ground that in each, the plaintiffs had no adequate remedy in the criminal proceedings provided by the respective statutes.[19] But that is exactly the contention we make here. Of course, the circumstances of the particular statute which creates this problem and renders the criminal proceeding inadequate for judicial review differs here from the circumstances present in *Shields* and *Stimson*. But the circumstances of those two cases also differ from each other. Nonetheless, the principle is the same. Accordingly, if, as we have shown, petitioners have no adequate judicial remedy in a criminal proceeding, *Shields* and *Stimson* establish that under such circumstances, the doctrine of sovereign immunity is not a bar to the present action.

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[19] We find nothing in the Court's opinion in the *Shields* case to support the government's contention that the determination of the Interstate Commerce Commission was not subject to judicial review in a criminal proceeding. We agree, however, that the issue in *Shields*, as here, was whether equity jurisdiction may be invoked under circumstances where the criminal prosecution does not offer an adequate remedy.

CONCLUSION

As shown by the Hearings before the Senate Committee on S. 2136 the difficulty in the present situation has been created by the efforts of the Department to apply the Foreign Agents Registration Act beyond the original congressional purpose of requiring the registration of foreign propaganda agents (see Govt. Br., pp. 17-24). The government has acknowledged that it itself is doubtful of the interpretation of the statute in other areas such as that represented by the petitioners' situation (see *supra*, p. 12). Petitioners, on the other hand, believe that their activities are exempt and see no reason why they should be required to surrender their important rights of privacy by registering if Congress has not so commanded. Their dilemma is that the criminal sanctions of the Act with its possible consequences on their standing as members of the bar are much too severe for them to submit their views to judicial review in a criminal proceeding. They seek, therefore, to bring this proceeding for the sole reason of having the courts determine the meaning and interpretation of the Foreign Agents Registration Act. Court determination of this legal question will in no way interfere with the administration of the Act, especially in view of the government's acknowledgment that this is a "test" case.

If the Court determines that petitioners' activities fall within the scope of the Act they will register; if the Court determines to the contrary, they will not register. In either event the purpose of the Act will not be thwarted. On the other hand, absent the availability of judicial review in this proceeding, the petitioners will have no choice except to comply with respondent's onerous demand of registration even if they

are exempt from the Act. As we show in our main brief (pp. 28-32), this is precisely the situation which Congress intended to be covered by the Declaratory Judgment Act. The sovereign immunity doctrine should not pose a barrier to effectuating the congressional intent as expressed in that Act.

Respectfully submitted,

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